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IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 196

No. 298

MR. CHARLES A. MEEKER, PRO-SE,
Petitioner,

vs.

MR. W. E. WALRAVEN,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF NEW MEXICO, SANTA FE, NEW MEXICO, TO CORRECT JUDGMENT OF DISTRICT COURT, BERNALILLO COUNTY, NEW MEXICO, CAUSE No. 81,671, AND APPEAL No. 7,168 IN SUPREME COURT OF NEW MEXICO.

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PETITION FOR A WRIT OF CERTIORARI.

Mr. Charles A. Meeker Prays That a Writ of Certiorari Issue to Review a Final Judgment of the Supreme Court of New Mexico (Tr. 13 to 22), Entered April 8, 1963, on Which a Rehearing Was Denied (Tr. 32) on May 9, 1963. The Opinion Is Reported in (380 P.2d 845), and Printed Here As Appendix "B".

JURISDICTION.

This is based on 28 U.S.C., 1257 (3); violation of U.S. Constitutional rights and guarantees, Amendment 14 (1); and the final judgment of the Supreme Court of New Mexico. (Tr. 13 to 22 and 32)

QUESTIONS PRESENTED.

(1) The New Mexico Case-Law, requiring parties in actions to assume at their peril and obligation, to correctly advise judges what the law in the case is, is a violation of Amendment 14 (1).

(2) Court below violated its Discretionary-Powers.

(3) These Discretionary-Violations were so severe until the results thereof have amounted to a denial of a fair and impartial trial and review, in breach of Petitioner's CONSTITUTIONAL-GUARANTEES under Amendment 14 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS.

Amendment 14 (1), United States Constitution;
28 U.S.C., Art. 1257 (3).

STATEMENT OF THE CASE.

(1) Petitioner Meeker won every phase of this suit before a jury except for a claim of libel based on a pleading filed in the action. The failure to prevail here is the direct result of the Court's omission to either consider in the Opinion, or at the trial of issues, that the trial-judge was many times advised what the law of libel in New Mexico is, that he openly recognized this many times and that this was point No. (1) (Tr. 2) on appeal. *In other words the opinion was written to fit the law quoted rather than the case tried or reviewed.* Please note:

(A) Many motions to dismiss were timely made. (Tr. 1, 5, 6, and 8)

(B) Several Motions for Summary Judgment were submitted. (Tr. 5, 6, and 8)

(C) Trial-Judge was advised what law of libel is (Tr. 7, 8, and 9), this including (Tr. 9), even a brief of said law of libel.

(D) Trial-Judge admitted that he was fully advised relating to the law of libel. (Tr. 8, 9, 11)

(E) Walraven lost nothing as a result of the alleged libel and admitted this in open court. (Tr. 3) That where one loses nothing in New Mexico, such a claim for libel is not warranted. (Tr. 2, Point 6, Tr. 6, 9)

(F) In the Opinion Proper (Tr. 18), the Court admitted that Petitioner had made timely objection relating to the injection of this libel into the issues to be tried.

(G) It was further admitted in the Opinion (Tr. 19 to 20), in discussing what is required of counsel, that it is not necessary for anything more, under the Barros, and Compton cases, than that it be shown that trial-judge was told what the law should be, and that it is not necessary to submit a proposed jury instruction on the subject.

(2) In New Mexico one has an absolute privilege relating to things said or filed in all legal actions [*Stewart* v. *Ging*, (1958) 64 N.M. 270 or 327 P.2d 333; and *Adams* v. *Tatsch*, (1961) 68 N.M. 446 or 362 P.2d 984]

(3) The record does not warrant the asumption in Opinion that all evidence that could have been developed by questioning Attorney Dolan would have been privileged. (Tr. 21) Establishing truth and mitigating circumstances was of very great importance which Court ignored although a point on appeal. (Tr. 2, Points 3 and 5 and Tr. 27, 28, 24, 29, and 30)

(4) Meeker could not hire counsel, and Court was advised of the reason why this was true. (Tr. 31) Meeker won a $20,000 judgment and collected, as a result of some grave misconduct of a certain Texas Attorney. Because of this several other attorneys and their clients stole around $10,000 worth of pipe and caused Meeker untold difficulties, which are still continuing. Three attorneys are on trial for the thefts, along with their clients. It was believed that Mr. Walraven and his attorney Mr. Dolan were possibly involved in this conspiracy. It was highly essential that Meeker question Mr. Dolan relating to his connections with this ring of thieves, which incidentally includes one Federal Judge's brother. (Tr. 27, 28, and 29)

(5) Very grave and serious Constitutional Violations of Meeker's rights have occurred, and the Court was told of this but ignored them. (Tr. 23, 24, 33, 5)

(6) The Opinion rendered is correct in all details except for the Court's failure to consider the (5) points scheduled above, for had this been done, it would have been legally impossible to have rendered such a ruling.

REASONS FOR GRANTING THE WRIT.

(1) It is common practice in lower appellate courts to ignore unquestionable facts to make opinions rendered fit the law quoted rather than the case tried and reviewed. This case is an example of such wide-spread customs. The final result is always a denial of justice, and the overcoming of all Constitutional guarantees by caprice and discretionary violations. It is possibly the weakest link in the Nation's appellate system. It is almost impossible to combat on appeal. The urgent need for consideration and appraisal by this Honorable Court is obvious.

(2) Attorneys, because of unwarranted protection and shelter given by judges in their desire to maintain the factual farce that no attorney can do wrong, are as a result virtually free to commit most civil frauds as well as business and social digressions. It, sir, is a National Disgrace! There is little or no danger to them of either civil or criminal liability. This situation is also wide-spread Nationally, and in particular is this true in New Mexico and throughout the Southwest. As a result thereof it is virtually impossible for any one who even whispers that some attorney has done wrong to hire local counsel. The case in point is a perfect example of the treatment one may reasonably expect in a situation like this as is also indicated in the Peoples-Hanbaugh Case subsequently outlined. A thorough appraisal by this Honorable Court is most essential in order to prevent the further spread of such improper customs, and review practices.

POINTS STATED AND ARGUED SEPARATELY.

POINT ONE.

The New Mexico Case-Law, Requiring Parties in Actions to Assume at Their Peril and Obligation, Correctly to Advise Judges What the Law in a Case Is, Is a Violation of Amendment 14 (1).

(1) All judges assuming office swear to uphold the laws of the State and the Constitution of the U.S. Their oath does not provide that this is only to be done, "if first advised what the law is". All trials should conclude justice and not evade equities and valuable property rights by resorting to pure technicalities, as is clearly the result obtained in this opinion from Court Below. When such denials and subterfuge are resorted to to evade an obligation to rule in accordance with the law of the State (Ging and

Adams Cases quoted above), the very great danger of maintaining this New Mexico Case-Law quoted in opinion is apparent indeed.

(2) This archaic New Mexico requirement that parties advise judges *at their peril* what the law is (Tr. 19, 20), is the result of early decisional law, no doubt to protect unqualified territorial judges. It is certainly not required today, and not a practice likely to result in anything except great harm and Constitutional-Violations. The proof of this is clearly shown in this case as well as in the final rulings in the several authorities cited in the Court's Opinion.

(3) But even if it be assumed that the New Mexico Case-Law is Constitutional, this cause should none the less be reversed. Carefully note that in the Opinion that it recognized that Meeker did make timely objection to the improper jury instructions 15, 17, and 20 (Tr. 18), and that the authorities cited in the opinion (Tr. 19 and 20) do not require that an actual proper instruction be submitted to the judge. In accordance with *Baros* v. *Kazierecuk* (68 N.M. 421, or 362 P.2d 798), all that is required in New Mexico is that the error be called to the trial-judge's attention. It is believed that opinion amply recognized that this was done. (Tr. 18, 1, 5, 6, 7, 8, 9 and 11)

(4) The Common Law makes no such requirement that judges be advised what the law is; there is no New Mexico Statute requiring it; and Federal Practice makes no such demands for such a high degree of procedural responsibility. In addition there are many States that consider this practice wrong and unconstitutional. [40 Neb. L.R. (3) P417 and 53 Mich. L.R. 505, 813 (1955)] The basic purposes to bring about justice are completely prostrated with such a law and it should be pulled out by the roots Nationally, as a violation of Amendment 14 (1).

(5) By choosing to ignore undisputed facts in the record the Court Below permitted this case to fall on technicalities alone, *i. e.*, that Meeker failed to tell the trial Judge what the law of libel in New Mexico was. This Assumption is Absolutely false (Tr. 1 to 12), the opinion being written to substantiate facts recognized and not the case tried or reviewed. In no way whatever can it be argued that this deprivation of valuable property rights, and Constitutional Deprivation is based on New Mexico Law. It is certainly nothing over which we may rejoice today, or which is likely to result in overwhelming confidence in the impartiality of the law. Had the Court Below even partially attempted to consider that trial judge was many times advised as to the law of libel in New Mexico, and that he recognized this openly several times, it would have been legally impossible to have reached the opinion rendered.

(6) The reason for Court Below having ignored facts in the case to make the law quoted in the opinion fit the facts included and not the case actually tried and reviewed is indeed difficult to understand. It would appear and seem that the only possible reason or explanation was to punish Petitioner Meeker because he dared suggest that some attorneys and Courts are somewhat lacking in both character as well as in responsibility. (Tr. 27, 28, 29, 30, 31)

POINT TWO.

The Court Below Violated Discretionary Powers.

(1) The Court Below was advised several times why it was most essential to question Attorney Dolan in order to establish truth and mitigating circumstances, as well as possible criminal conspiracy. When attorneys join with their clients and others for retaliatory purposes and com-

mercial gain, the protection furnished that permit these criminal violations is not just or right:

(2) Because of the denial of the right to question Attorney Dolan it became impossible to either defend the claim of libel; or to justify an issue of truth, or the many existing mitigating circumstances. This coupled with the very improper jury instruction 20 (Tr. 12), it becomes not at all surprising that the jury reached the findings made.

(3) The sanctified curtain drawn around courts and attorneys is not warranted. It is throughout the entire United States, and in particular in the Southwest, virtually impossible to employ local counsel if even a whisper is breathed that there is a possibility that some lawyer has done wrong. An opinion like this one will never help this already distressing situation. The double standard should not be maintained, or a case of this type be permitted to more firmly intrench or expand this improper custom and practice.

(4) The recent refusal of Congress to permit raising this sanctified curtain as to the few of its members who are dishonest, is almost identical in principle and context. It is most certainly something that is not at all likely to endear or establish confidence. When large groups are involved there are always the few who need a higher degree of surveillance. No group should be exempt from the clarifying rays of truth and correction likely to develop under the spotlight of public exposure.

POINT THREE.

These Discretionary Violations Were So Severe until the Results Thereof Have Amounted to a Denial of a Fair and Impartial Trial and Review, in Breach of Petitioner's Constitutional-Guarantees, under Amendment 14 (1).

(1) There is not one responsible court in the entire United States that would uphold jury instruction No. 20. The Court Below did not approve this instruction. Instead it evaded its legal obligation to rule on its propriety and to reverse the trial Court by ignoring undisputed facts that are in the record. This was done after these facts were carefully called to Court's Below attention. The facts in the opinion were carefully husbanded to fit the law quoted in the opinion rather than the case tried or reviewed on appeal. This was all done under very strange and disturbing circumstances. (Tr. 1 to 12; Tr. 23 to 33)

(2) This method of evading Constitutional-Guarantees is common practice. It is indeed a very weak link in our legal guarantees. Add to this the few cases that are permitted to be heard under a prayer for a writ of certiorari, and it becomes apparent that these lower appellate tribunals are almost certain of succeeding when such Constitutional Evasions and property deprivations are intended. For many centuries humans in these positions of trust and power have constantly sought ways to overcome or to circumvent and evade rights guaranteed under Constitutional Law. This case is a pathetic illustration of how the law and its courts often miserably fail. Such distressing evasions of Constitutional Rights do succeed, as a rule rather than as an exception to the rule. It is quite likely, because of reasons listed, to do so in this case. This, Sir, is a National disgrace!

(3) Petitioner Meeker always hires counsel when this is possible. It is true that he is both a graduate in Law as well as in Engineering, but he has only one client (Major Oil Development CO), a business owned by his wife and children. He never takes outside cases except if they be ones of charity or persons being persecuted by the law in methods similar to those that were used in this cause, and the Peoples-Hanbaugh action. (Tr. 26, 31)

(4) A case like this one is a clear and stern warning to all attorneys to never, regardless of the circumstances or injustices that may be inclusions, to question the integrity or the motives of any attorney. It is because of such unfortunate customs and rulings that it is now virtually impossible to employ local counsel when the problem is faced. Meeker believed he needed counsel, and irrespective of the methods used to deny him this right, it is in itself a Constitutional-Violation of major proportion. God help us as a Nation if such practices are further expanded and condoned by those in positions of trust, or if it be interpreted that this Honorable Court is willing to "WINK", at the disgrace.

(5) Argued before the Supreme Court of New Mexico on the same day as this case was considered was the case of *Peoples-Hanbaugh* v. *Peoples-Hanbaugh et al.*, as Case No. 7,160 (380 P.2d 513). (Tr. 36, 31) Therein several New Mexico attorneys and doctors were charged with conspiring to violate Civil-Rights of two women plaintiffs, along with much more very degrading and improper relations and conduct towards these two ladies. The facts pleaded were terrible. The women could not employ local counsel, which is of course always "par for the course", in situations like this. The ladies were then summarily thrown out of court by the trial judge in a very obvious unjust manner. They too, had dared to part the sanctified curtain which has been drawn around courts and lawyers!

(6) Fortunately these women were wealthy and could afford to import, at great expense and difficulty, out of state counsel who could not be subjected to the repercussions that might be expected to be applied to them in manner now being applied to Meeker, if they participated in parting this sanctified curtain. Had these ladies been poor they would have been ground under the foot of legal manipulation, and which is the general final conclusion in most similar instances where parties are poor, and attorneys are charged.

(7) The reason for discussing this Peoples-Hanbaugh Case is to permit a current graphic illustration as to just how far trial courts in New Mexico will go when such problems are faced, and to give this Honorable Court an opportunity to comment on such behavior. The case was remanded but note that the ladies had been placed to far more expense than an average person could afford, to buy their rights to justice. We indeed have nothing to rejoice about when things like this happen in America, and, it is respectfully urged that the cause presented by Petitioner Meeker is even a more severe violation of discretion and Constitutional Rights because it was not reversed. Nations throughout all history are eventually destroyed because of similar indifferences and failures of those in power. Do not think that it can not happen here!

CONCLUSION

(1) It is impossible to justify the Opinion based on any sound foundation of equity, fact, or law. It was forced to fit facts carefully chosen and quoted, and it has no logical relation to the transcript of case tried and reviewed. There could be presented no worse example of abuse of discretion. The opinion should not be affirmed and to

stand unchallenged as further encouragement and a *Stare Decisis* for this class of unfortunate Constitutional Evasion.

(2) It is realized that the purpose of a writ is not to give the loser another chance at winning. In this action the Petitioner has yet to be given his first fair chance to prevail. Mr. Walraven contracted for $6,488.34 in services that he did not pay. Because of his wilful and irresponsible failure to pay these third parties for services he personally ordered, Petitioner Meeker had to pay Mr. Walraven's just debts. *There is no difference in terminal finality or extent of loss, when property is abstracted as a result of improper legal procedures than where a dictator takes such property by decree and, without compensation.* If this class of court behavior is permitted within the United States, it indeed will not be long until the much quicker and efficient decree method will be in general use. Already we as a Nation have been entwined so tightly in these destructive processes, and which are ever on the increase, so as to mummify the once free self-reliant American. The only remaining delaying force we as Americans have is our Supreme Court. This danger we face is the greatest ever encountered in our history. The amount involved or the loss to Meeker is not the issue of importance. Instead these capricious, improperly applied judicial failures are the real danger.

(3) Of what practical use are Constitutional Protective Covenants if they may be so easily avoided by reviewing a legal and factual situation entirely foreign to the actual issues that were present in the trial court. There was a time in this Country when fundamental principles of right and justice were esteemed of minor importance compared to the quibbles, refinements, and the technicalities of special pleading. The fundamentals of law and justice during that unfortunate period seemed of trifling consequence

Happy for mankind and the law itself, that epoch is past. But an attempt is here made by the Opinion Below to raise the long dead cadaver of such legal chicanery. This case should be summarily remanded and reversed as to the libel phase of the action and without the need for oral argument. It is believed that the Constitutional violations are so severe to warrant such a summary disposal, and it is so prayed.

Respectfully submitted,

CHARLES A. MEEKER, PRO-SE

APPENDIX A

28 U.S.C.A.—Art. 1257 (3):—State Courts, Appeals & Writs:

"By writ of certiorari, * * * where any title, right, privilege, or immunity is claimed under the Constitution * * *.

14th Amendment to the Constitution of the United States:

"No person shall be deprived by any State of life liberty or property, without due process of law."

* * *

APPENDIX B

CHAVEZ, Justice.

This case arose out of a contract entered into between plaintiff-appellant, Charles A. Meeker, and defendant-appellee, W. E. Walraven, dated February 11, 1960, involving the purchase by appellee of a one-eighth working interest in a certain oil and gas well in Erick, Oklahoma.

Appellant originally filed suit for declaratory judgment in Bernalillo County, New Mexico. He named Troy Hembree, personally, and the Capital Well Servicing Company as defendants. By order of the district court dated April 13, 1960, appellee was interpleaded as a party in interest, and on May 6, 1960, by order of the district court, appellee was directed to answer appellant's amended complaint, wherein appellant prayed for judgment against appellee in the sum of $6,800, which sum appellant alleged

he was required to pay to Capital Well Servicing Company and which sum was due from appellee to said company.

All issues between the original parties were settled and the district court entered an order dismissing appellant's complaint as to Capital Well Servicing Company, thus leaving appellant and appellees as the parties-litigants.

On May 18, 1960, the firm of Phillips, Dolan & Clear, by Terrance L. Dolan, entered their special appearance as attorneys for appellee and filed a motion to dismiss appellant's claim.

On September 27, 1960, appellee filed an answer and counterclaim wherein he asked judgment in the sum of $6,000 for services rendered at Erick, Oklahoma; for $2,305.46 for sums expended by him as a result of the conduct of appellant; for the sum of $4,895.62 for obligations incurred in connection with the purported contract between the parties and specifically for demands made upon appellee in the above mentioned sum by the Western Company of Ft. Worth, Texas, and which said sum appellee paid or has obligated himself to pay; and that as a result of appellant's conduct, appellee was required to retain the services of counsel and will be required to pay said counsel reasonable attorney's fees in the sum of $5,000. Appellee prayed judgment against appellant in the sum of $18,701.08.

On October 3, 1960, appellant filed a motion for summary judgment, wherein he alleged the following:

> "(2) Indeed it is difficult to adequately put into words a proper condemnation of such a disgraceful and inadequate, and wholly untrue Pleading as has been submitted by Defendant Walraven, which is dated September 27, 1960, and separately answered. The idiotic rantings and ravings coupled with the vicious

untruths, (fully proved as prevarications in Walraven's own sworn testimony in his two depositions dated September 17, 1960, and June 22, 1960), can only be compared with the insane lies of the two Deceiver's KRUSCHEV AND CASTRO. Nations as well as individuals have all too often followed the course that regardless of the Justness, or the Truthfulness, that any means of falsehood or deception, coupled with a full measure of legal RED-TAPE, and TECHNICALITIES, justifies the Ends. We, not only as Individuals, but as a Nation should think of these very Immoral Conclusions, and Positions, not only with our heads, but with the very marrow of our bones. Like the above two quibbling, evasive, Equivocators, this Defendant (Walraven), by his shiftless, irresponsible, and entirely untrue Ambiguities given in his disgraceful Answer of September 27, 1960, hopes to so confuse the issues to a point where he can evade his Just Obligations. In this, he is just like all other Squealing, Quibbling, Squirming, prevaricating Welchers.

"(3) It is rare indeed when a Case evolves itself to a point where by the depositions of a defendant, through his own sworn testimony, so completely and without the slightest doubt, establishes his liability in every detail. In plaintiff's separate answer to defendant Walraven's answer of September 27, 1960, and which answer is submitted at the same time of this Motion for Summary Judgment, complete references as to Page Numbers, and Line Numbers are furnished. There is not the slightest doubt of Walraven's full and complete liability. In fact, to allow this action to continue will only result in the grossest of abuse of process. It is most urgently prayed that every detail of these depositions, interrogatories, and affidavits be studied in detail and with great care. The State of New Mexico should not be burdened with such a silly, unsound, prattle of untruths in view of the unquestionable absolute preponderance of evidence, that has

been fully established in this case. In fact, most of the facts have been established by Walraven himself."

On October 6, 1960, by virtue of the inherent power invested in the district court, and on the court's own motion, it ordered paragraphs 2 and 3 of appellant's motion for summary judgment stricken as scandalous and irrelevant matter.

On October 10, 1960, appellant filed another motion for summary judgment based on alleged sworn admissions of appellee in two depositions of appellee taken on June 22, and September 17, 1960.

On November 21, 1960, appellee filed his first amended answer and first and second amended counterclaims, which denied the allegations of appellant's complaint, except that appellee admitted he signed the instrument designated as "Enclosure B" of appellant's basic petition. Appellee specifically denied that said instrument created a valid contractual obligation. The second cause of action alleged that on October 3, 1960, appellant maliciously prepared and composed a certain writing denominated a "Motion for Summary Judgment," and alleged further that said writing contained false and defamatory matters in paragraphs 2 and 3 thereof; that pursuant to appellant's malicious intent, said writing was read by the judge of the district court and diverse other persons; that said defamatory matter was calculated to cause great injury to appellee's reputation for honesty, uprightness of character, truthfulness, and allegiance to the Constitution of the United States of America and the state of New Mexico; that said statements made by appellant were not within the purview of any issue of fact or question of law at issue in said cause, and were prepared, composed and published by appellant with a malicious intent to damage the reputation of appellee; that appellee was entitled to punitive dam-

ages in the sum of $50,000; that as a result of said publication, appellee suffered actual damages in the sum of $10,000. Appellee prayed for judgment against appellant in the sum of $60,000.

On November 28, 1960, appellant filed a motion to dismiss appellee's first affirmative defenses and first and second causes of action set out in appellee's first amended answer and counterclaims.

The record is replete with numerous and sundry motions and affidavits of appellant and other parties, requests for admissions to written interrogatories, a digest of law and facts, depositions and arguments, requests for admissions, and requests for interrogatories. Nevertheless, after the voluntary disqualification and recusal of the four district judges of the second judicial district, the cause came on for trial before the Honorable Frank B. Zinn, district judge of the eleventh judicial district, by designation of the chief justice of the supreme court, and a jury, on October 23, 1961. On October 25, 1961, the jury, having heard the evidence of the parties and being duly instructed by the district court, rendered a verdict for appellant on his cause of action arising from the contract and assessed damages in the sum of $6,488.34. On appellee's first counterclaim, the jury found the issues against appellee and for appellant. On appellee's second counterclaim, based on libel, the jury found the issues for appellee and against appellant and assessed appellee's damages in the sum of $6,488.34. It is from the jury's verdict on appellee's second counterclaim that appellant perfected this appeal.

[1] Appellant's statement of the facts does not comply with our rules. It contains a recitation of appellant's education, training, business operations and residence, together with arguments on the morality of investors and

by innuendo, argues on appellant's views as to the irresponsibility of some lawyers in filing law suits, all of which are improper in setting out a statement of the facts. In his statement of the facts, appellant also gives citations to the New Mexico Digest, Corpus Juris Secundum, and other texts; sets out impertinent and scandalous argument; quotes appellee's admissions, with transcript references; and, as such, appellant's statement of the facts, containing six typewritten pages, is worthless and unworthy of consideration.

Appellant and appellee entered into a written contract relating to the purchase of a one-eighth working interest by appellee in an oil and gas well being drilled in Erick, Oklahoma. Appellant's claim is that appellee failed to make payment of a number of obligations incurred under his responsibility under the contract, and that as a result of appellees' failure to make said payments, appellant was compelled to pay said accounts in the sum of $6,488 34.

Appellee denied appellant's claim and affirmatively alleged that appellant made misrepresentations of fact to the effect that there was an existing gas well on the property in which appellee purchased the working interest. Appellee's first counterclaim is for recovery of monies expended by him in the sum of $6,920.80, and to recover damages for loss of time in the sum of $6,000. The basis of appellee's first counterclaim is that he was induced to enter into the agreement by fraudulent misrepresentations on the part of appellant.

Appellant's points, which are decisive of this case, are his contentions that the trial court committed error "in the improper court instructions given in this action. (Tr. 299 to 311, and especially instructions NOS. 15, 17 and 20)."

Nowhere in the record is there a specific objection by appellant to the instructions given by the trial court with respect to libel, except as hereinafter set out, and appellant did not tender any instructions setting out what he considered was a correct statement of the law upon any point relating to libel. The only objection made by appellant is contained in the following language:

> "I object to the injection of the libel phase into this case, and to all instructions of the defendant Walraven's attorneys as related to the libel phase of the action."

Thus, we are faced with the question of whether appellant preserved error in the trial court's instructions so that it can be considered by us on appeal.

This question has been before us on numerous occasions. In State v. Compton, 57 N.M. 227, 257 P.2d 915, we said:

> "* * * The primary purpose of any objection to an instruction is, of course, to alert the mind of the judge to the claimed error contained in it, to the end that he may correct it. This fundamental purpose must be read into any and all rules on the subject. * * *
>
> * * *
>
> "* * * But, where the court has instructed erroneously on the subject, although a correct instruction has been tendered on the point, if it leaves it doubtful whether the trial judge's mind was actually alerted thereby to the defect sought to be corrected by the requested instruction, the error is not preserved unless, in addition, the specific vice in the instruction given is pointed out to the trial court by proper objection thereto."

We followed the above rule in Lucero v. Torres, 67 N.M. 10, 350 P.2d 1028 wherein the trial court instructed the

jury on the doctrine of unavoidable accident. Objection was made to the instruction:

> "* * * 'on the ground that the evidence does not justify the giving of such an instruction; that there was a clear showing of negligence on the part of the defendant, and that to submit this issue to the jury unduly emphasizes the burden on the plaintiffs through their case to their prejudice.'"

We held that appellant could not raise the issue because he failed by proper objection to preserve the error, if any, of the lower court, in that the trial court was not apprised of the inaccuracy of its instruction, as being an incorrect statement of the law of unavoidable accident, by the objection made by appellant.

We thought that we had clearly set out the proper method to preserve error in the giving or refusing of an instruction. In Baros v. Kazmierczwk, 68 N.M. 421, 362 P.2d 798, we stated:

> "It is our understanding of the holding in State v. Compton that to preserve error in instructions for review: (1) it is sufficient if a correct instruction has been tendered, if the court has not instructed on the subject matter; (2) if, however, the court has instructed erroneously on a subject, even where a correct instruction has been tendered, it must be clear in the record that the error has been called to the court's attention. Where the court has instructed erroneously, it is not a prerequisite to a right to complain of an instruction that a correct instruction be offered—rather the important question concerns the clarity with which the errors in the instruction given have been called to the attention of the trial court. * * *"

[2] Appellant has not met the requirements of our rule, that the specific defect in the instruction given be

clearly pointed out to the trial court. Accordingly, appellant cannot, on appeal, raise the issue since he failed, by proper objection, to preserve the error.

[3-5] We would be remiss in our duty if we did not seriously comment upon the language used by appellant in his briefs. The fact that appellant is both client and lawyer does not excuse him from the scandalous, abusive and offensive language which he has used in his briefs, both toward appellee and appellee's attorney. Appellant also improperly reflects upon our judicial system and our courts. We remind appellant, as a member of the Bar of this state, that in any cause in which he appears he is an officer of the court; that when he was admitted to practice law in New Mexico, he swore, under oath, that he would maintain the respect due to courts of justice and judicial officers; that he would abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is involved; that he would employ for the purpose of maintaining a cause such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law. As an officer of the court, an attorney's personal conduct must be above reproach. He may not permit his personal feelings and interest to take precedence over his obligation of respect to the judicial process and judicial officers. The Canons of Professional Ethics of the American Bar Association are his guide when dealing with other lawyers, clients, and adverse litigants. Canons 17 and 18 state:

> "17: Clients, not lawyers, are the litigants. Whatever may be the ill feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward

suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

"18. A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of client in the trial or conduct of a cause. The client cannot be made the keeper of the lawyer's conscience in professional matters. He has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf."

[6] Appellant's contention, that he was entitled to call the opposing counsel as a witness, was properly refused by the trial court. The Canons of Professional Ethics do not specifically cover this matter. Canon 19 states that except in the instance when it is essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client. Canon 37 requires a lawyer to preserve the confidence of his client. As appellant sought to have the opposing counsel testify adversely to the interests of said counsel's client, and there being a good possibility that such testimony would require him to breach his client's confidence, it was clearly not error by the trial court to refuse to require appellee's attorney to take the witness stand and be questioned by appellant.

[7] We believe, under the state of the record and the briefs submitted by appellant in this case, that appellant is subject to reprimand. However, appellant states that even though he has been admitted to the Bar of this

state, this is the only case that he has personally tried. Even so, appellant is exceptionally well educated, a graduate of one of our military academies, and a retired member of our armed forces. With this background, he should know that all that is expected of him, as a member of the Bar, is that he comport himself according to the standards of the legal profession and, according to the standards well known to him, that he comport himself as an officer and a gentleman. This should be fair warning.

Costs in connection with the preparation of the record in this cause on appeal, as set out under our Rule 22, will be assessed against appellant.

Finding no error, the judgment of the district court, entered pursuant to the jury's verdict, is affirmed.

It is so ordered.

CARMODY and NOBLE, JJ., concur.